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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,120	11/20/2003	Graham Bryant	2743-1-001	9097
23565	7590	05/16/2005		
KLAUBER & JACKSON 411 HACKENSACK AVENUE HACKENSACK, NJ 07601			EXAMINER UPTON, CHRISTOPHER	
			ART UNIT	PAPER NUMBER
			1724	
DATE MAILED: 05/16/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/718,120

Applicant(s)

BRYANT, GRAHAM

Examiner

Christopher Upton

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,12-16,18-20,22,23 and 25-29 is/are rejected.
- 7) ☒ Claim(s) 3,11,17,21 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 2, 4, 5, 23, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Preus et al.

Preus discloses a separation tank having a low flow treatment path (12) with a high flow bypass to a high flow treatment path (14), substantially as claimed. While Preus does not explicitly disclose that the treatment paths remove non-floating material, it is submitted that such removal would obviously be inherent to the structure of Preus, as Preus discloses baffles (20 and 38) extending vertically from the bottoms of both the high and low flow treatment paths, which would perform the function of blocking non-floating material.

The instant claims also differ from Preus in recitation of a single covered container instead of multiple containers. However, it is submitted that this would have been an obvious matter of structural design, and does not patentably distinguish over the Preus patent.

Also, while Preus discloses that the low flow treatment path discharges into the high flow treatment path instead of being in parallel to it as disclosed by the instant

application, it is submitted that such a serial with bypass structure is not precluded by the language of the instant claims.

With respect to claims 2 and 25, it is submitted that the overflow weir (20) of Preus forms a partition with an opening above the bottom, as recited.

3. Claims 7, 8, 12, 15, 16, 18, 19, 20, 22 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Preus in view of Williamson.

Claims 7, 8, 12, 15, 16, 18, 19, 20, 22 and 29 differ from Preus in recitation of a filter chamber in communication with the low flow treatment path, wherein the filter is defined in claims 20 and 21 as being a plurality of blocks. Filtration of an effluent that has been gravitationally treated by such a filter is known, as disclosed by Williamson. It would therefore have been obvious for one skilled in the art to add a filter to the discharge of Preus, to perform a final filtration prior to discharge. Note that in Preus, the low flow path discharges through the high flow path to a final discharge, and that therefore filtering the final discharge of Preus would filter the low flow discharge.

4. Claims 6, 9, 10, 13, 14, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 7, 8, 12, 23 and 29 above, and further in view of Malone et al.

Claims 6 and 9 are similar to claims 7 and 8, but also recite a groundwater discharge. Claim 27 depends from claim 23 and recites language similar to claim 6. Claims 13, 14, and 28 depend from claims 12 and 23, and also recite a groundwater discharge. It is known to discharge treated water to groundwater, as exemplified by

Malone (see Background of the Invention), and it is therefore submitted that a groundwater discharge of the final effluent of the device of the instant claims would have been an obvious alternative to discharge into drainage or surface water system, depending on the location of the device and the soil characteristics.

5. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The recitation of a separation tank having a low flow treatment path with a high flow bypass to a high flow treatment path, each of which has a means to remove both floating and non-floating material, wherein the low flow treatment path comprises a partition with at least two vertically spaced openings separating the path into two treatment chambers patentably distinguishes over the prior art of record. Preus discloses the partitions being underflow or overflow weirs, thus teaching away from a structure with multiple vertically spaced openings.

Claims 11, 17 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The recitation of a separation tank having a low flow treatment path with a high flow bypass to a high flow treatment path, each of which has a means to remove both floating and non-floating material, wherein the bypass from the low flow path to the high flow path is an overflow weir patentably distinguishes over the prior art of record.

Preus discloses that the high flow is taken from the lower area of the low flow path, not from the overflow, as that would discharge hydrocarbons to the high flow path instead of to the concentration tank.

Claim 21 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The recitation of a separation tank having a low flow treatment path with a high flow bypass to a high flow treatment path, each of which has a means to remove both floating and non-floating material, with a filter in the low flow treatment path comprising a plurality of filter blocks in the form of a squared S configuration patentably distinguishes over the prior art of record.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

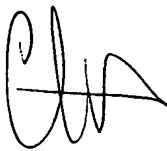
Pank discloses a bypassing separator system with low and high flow treatment paths, but wherein the high flow path only removes non-floating material. Other bypassing separators of interest include Turco, Kizhnerman, Kistner, Tran-Quoc-Nam, Collings, and Montieth. Separator structures of interest are disclosed by Sager, Adams and Waring.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Upton whose telephone number is

571-272-1169. The examiner can normally be reached on 7:30-5:00, off every other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'CU', with a stylized flourish extending from the end.

Christopher Upton  
Primary Examiner  
Art Unit 1724